

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

VIRGINIA HAWTHORNE, §
Plaintiff, §
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§
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vs. § **CIVIL ACTION NO. 4:17-cv-02350**
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KS MANAGEMENT SERVICES, LLC §
d/b/a KELSEY-SEYBOLD CLINIC, §
Defendant. §

PLAINTIFF VIRGINIA HAWTHORNE'S MOTION FOR RECONSIDERATION

COMES NOW, Plaintiff Virginia Hawthorne (“Hawthorne”), and files this Motion for Reconsideration of the Court’s Order on Motion for Attorneys’ Fees. Hawthorne respectfully asks that this Motion be considered expeditiously, and in support shows the following:

NATURE AND STATE OF THE PROCEEDINGS

Hawthorne filed this employment case on August 1, 2017, asserting claims of discrimination and retaliation under the Americans with Disabilities Act (“ADA”). Between December 1 and December 7, 2021, this case was tried to a jury, and on December 7, 2021, the jury returned a verdict in favor of Hawthorne against Defendant KS Management Services, LLC d/b/a Kelsey-Seybold Clinic (“Defendant”) on Hawthorne’s claims that Defendant discriminated against her on the basis of her actual disability and that Defendant failed to reasonably accommodate Hawthorne’s disability, both in violation of the ADA.

Hawthorne filed her Application for Attorneys’ Fees, Litigation Expenses, and Costs (“Application”) on December 22, 2021. (Dkt. 89). Defendant filed its Response on January 24, 2022, and Hawthorne filed her Reply on February 7, 2022. (Dkt. 92 and Dkt. 97,

respectively). On May 17, 2022, the Court entered an Order granting Hawthorne’s Application in part and denying it in part. (Dkt. 98). Specifically, the Court awarded Hawthorne attorneys’ fees at an hourly rate of \$400 and applied a multiplier of 90% of all hours she sought. (*Id.* at 6-7). The Court further awarded Hawthorne the costs she sought other than \$486.41. (*Id.* at 9). Hawthorne now files this Motion for Reconsideration only as to the hourly rates the Court awarded Hawthorne’s counsel.

ARGUMENT

In the Court’s Order on Hawthorne’s Application, the Court determined that \$400/hour was a reasonable hourly rate for both Daryl Sinkule and Todd Slobin. (Dkt. 98 at 6). Hawthorne respectfully submits that a greater hourly rate is appropriate for both Mr. Sinkule and Mr. Slobin for the following reasons.

First, as set forth in her Application, Mr. Slobin was awarded a reasonable rate of \$600/hour in an employment case that he arbitrated with the Honorable Susan Soussan in the summer of 2021. (Dkt. 89-2 at ¶ 14). Second, in *Novick v. Shipcom Wireless, Inc.*, 2018 WL 6079348, at * 2-3 (S.D. Tex. Nov. 21, 2018) (which this Court cited in its Order at 5), in November 2018, the Honorable Christina Bryan awarded Mr. Sinkule an hourly rate of \$450 and Mr. Slobin an hourly rate of \$500 in a case brought under the Fair Labor Standards Act.

Finally, it has just come to the attention of Hawthorne’s counsel that in March 2022, the Texas Employment Lawyers Association published the “2022 Attorneys’ Fees Hourly Rates Yearbook for Employment Law,” which provides a review of the hourly rates of employment attorneys in Texas based on quantity of experience (grouped by 10-year classes), geographic regions corresponding with the four (4) federal districts in Texas, and accounting for inflation to the end of 2021 via the U.S. Bureau of Labor Statistics’ data for legal services. See “2022 Attorneys’ Fees Hourly Rates Yearbook for Employment Law,” hereinafter

referred to as “Handbook,” attached hereto as Exhibit A.

According to the Handbook, a reasonable hourly rate for Mr. Sinkule, adjusted for inflation to the end of 2021, is \$466.36. (*See Exhibit A at 104*). Mr. Sinkule’s requested hourly rates of \$450/hour from the inception of the case until January 31, 2019, and \$500/hour from February 1, 2019 to the present are *lower* than the inflation-adjusted hourly rates of the following attorneys listed in the attached Handbook for Southern District of Texas employment law work who have been practicing for the same or less time than Mr. Sinkule (JD 2002) has: Peter J. Mee (JD 2009) at \$1,182.88; Bryan M. O’Keefe (JD 2011) at \$1,082.85; Michael A. Schulman (JD 2011) at \$1,082.85; Brian Glenn Patterson (JD 2006) at \$1,050.89; Joshua K. Sekoski (JD 2012) at \$923.97; Courtney L. Stahl (JD 2013) at \$898.58; Scott L. Friedman (JD 2013) at \$863.05; Katherine A. Brooker (JD 2012) at \$843.70; Wes Benter (JD 2018) at \$835.00; Jamila Mensah (JD 2006) at \$791.97; William J. Moore (JD 2005) at \$702.52; Fazila Issa (JD 2004) at \$663.27; J. Marshall Horton (JD 2003) at \$634.76; Zenobia Harris Bivens (JD 2008) at \$615.84; Katherine D. David (JD 2004) at \$600.32; Michael A. Correll (JD 2009) at \$564.52; Alfonso Kennard, Jr. (JD 2002) at \$558.35; Lauren C. Fabela (JD 2008) at \$546.60; Emery Gullickson Richards (JD 2014) at \$538.86; Caitlin E. Gernert (JD 2014) at \$530.00; Charles M. Rosson (JD 2010) at \$511.33; and Austin Anderson (JD 2003) at \$507.67. (*Exhibit A at 60*).

Similarly, according to the Handbook, a reasonable hourly rate for Mr. Slobin, adjusted for inflation to the end of 2021, is \$600. (*See Exhibit A at 85*). Mr. Slobin’s requested hourly rate of \$600 is *lower* than the inflation-adjusted hourly rates of the following attorneys listed in the attached Handbook for Southern District of Texas employment law work who have been practicing for the same or less time than Mr. Slobin (JD 1997) has: Peter J. Mee (JD 2009) at \$1,182.88; Nathan J. Oleson (JD 1999) at \$1,132.11; Esther G. Lander

(JD 1997) at \$1,132.11; Edward Holzwanger (JD 2001) at \$1,097.02; Michael A. Schulman (JD 2011) at \$1,082.85; Brian Glenn Patterson (JD 2006) at \$1,050.89; Joshua K. Sekoski (JD 2012) at \$923.97; Jennifer M. Trulock (JD 1997) at \$921.70; Courtney L. Stahl (JD 2013) at \$898.58; Sean Michael Becker (JD 1998) at \$889.84; Scott L. Friedman (JD 2013) at \$863.05; Katherine A. Brooker (JD 2012) at \$843.70; Wes Benter (JD 2018) at \$835.00; Martina E. Vandenberg (JD 2000) at \$805.20; Jamila Mensah (JD 2006) at \$791.97; Matthew G. Nielsen (JD 2001) at \$740.55; Gregory J. Ossi (JD 1997) at \$739.00; Jeffrey M. Anapolsky (JD 1999) at \$710.74; William J. Moore (JD 2005) at \$702.52; Cristin M. Obsitnik (JD 1997) at \$672.29; Fazila Issa (JD 2004) at \$663.27; Scott K. Davidson (JD 1998) at \$648.25; Alan J. Marcuis (JD 1998) at \$639.67; J. Marshall Horton (JD 2003) at \$634.76; Rex Burch (JD 1997) at \$632.40; Zenobia Harris Bivens (JD 2008) at \$615.84; and Katherine D. David (JD 2004) at \$600.32. (Exhibit A at 60).

Respectfully, the Handbook contains more current information than the Court reviewed and relied upon in determining that \$400 was a reasonable hourly rate for Hawthorne's counsel. In light of this new information, the hourly rates requested in Hawthorne's Application for both Mr. Sinkule and Mr. Slobin are appropriate.

CONCLUSION

WHEREFORE, Plaintiff Virginia Hawthorne respectfully requests that based on the greater hourly rates that Mr. Sinkule and Mr. Slobin have been awarded in the past, and considering the inflation-adjusted hourly rates that employment attorneys who have been practicing for fewer years than Mr. Sinkule and Mr. Slobin have been awarded in the Southern District of Texas, that the Court grant this Motion for Reconsideration and award Mr. Sinkule an hourly rate of \$450 from the inception of the case until January 31, 2019, and an hourly rate of \$500 from February 1, 2019 to the present, and Mr. Slobin an hourly rate of \$600.

Respectfully submitted,

KILGORE & KILGORE, PLLC

By: /s/ Daryl J. Sinkule

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document has been forwarded to the following counsel of record pursuant to the electronic filing system for the United States District Court for the Southern District of Texas on this, the 27th day of May, 2022:

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